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FOUNDED 1866

April 8, 2016

By Email

Mr. James Saric
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd., SR-6J
Chicago, IL 60604

Re: Special Notice Letter Related to Area 1 of Operable Unit 5 of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, EPA ID No. MID006007306

Dear Mr. Saric:

I am writing on behalf of NCR Corporation in response to the above-referenced special notice letter, which was dated March 7, 2016, and which we received on March 9, 2016. The letter encouraged NCR to contact EPA within 30 days of receipt of the letter to indicate NCR's willingness to participate in future negotiations concerning the Site.

NCR is willing to participate in future negotiations concerning the Site. Indeed, NCR has been proactive in initiating discussions with the government to resolve any potential liability NCR may have related to the Site. [REDACTED]

[REDACTED] In addition, NCR has met with the natural resource trustees for the Site to discuss identifying natural resource restoration projects and otherwise resolving any potential liability for natural resource damages, and NCR has participated in the technical working group that the trustees formed for this purpose.

NCR has taken these steps notwithstanding that, unlike the other companies that received special notice letters, NCR never owned or operated a paper mill or, indeed, any facility on or near the Kalamazoo River. NCR's liability, if any, rests solely on the contention that NCR arranged for the disposal of hazardous substances when its facilities elsewhere in the Midwest sold paper broke or trim for recycling. The U.S. Court of Appeals for the Seventh Circuit has rejected the contention that the sale of broke or trim is an arrangement for disposal under Superfund. While the U.S. District Court for the Western District of Michigan has held to the contrary in a ruling applicable only to a very narrow slice of time during which only a small percentage of the PCBs at the Site were released, NCR intends to appeal that ruling to the U.S. Court of Appeals for the Sixth Circuit when appropriate, and the district court has not reached any conclusion as to the share of liability NCR may have. In the recently-concluded trial, NCR

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has presented strong evidence that its liability – if NCR is liable at all – is divisible at a very small percent of the total liability or, alternatively, that its equitable allocation should be between zero and less than 2 percent.

NCR will be open to any proposal that is made in negotiations concerning the Site, but in light of the above, NCR does not believe it makes sense for NCR to assume any significant role for the remedial design and remedial action at Area 1 of Operable Unit 5. [REDACTED]
[REDACTED]

EPA should feel free to reach out to us with any questions or proposals that the Agency may have regarding the Site. In addition, while we ask that you not share this letter [REDACTED]
[REDACTED]

EPA should feel free to convey to other PRPs that NCR is willing to be part of the discussions you reference. NCR welcomes continued dialogue with the government and other PRPs regarding effective and equitable ways to clean-up and restore the Site and resolve any potential liability NCR may have at the Site, should the Sixth Circuit reach such a conclusion.

NCR requests that EPA respect the confidentiality of this letter as a settlement communication subject to Rule 408 of the Federal Rules of Evidence. NCR also requests that EPA withhold this letter, if requested, pursuant to Exemptions 4 and 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and (5).

Sincerely,

/s/ John M. Heyde

John M. Heyde

cc: Ed Gallagher, NCR Corporation
Bryan Heath, NCR Corporation